

⁵ See *True-Up Order*, 19 FCC Rcd at 13580-81, para. 2.

the first quarter 2003 from annual revenues reported on the FCC Form 499-A to estimate a contributor's actual revenues for the second through fourth quarters of 2003. The Administrator of the universal service support mechanisms⁶ would compare this amount to the sum of revenues projected for the second through fourth quarters of 2003 to determine whether a refund or collection was appropriate.⁷ Under this formula, if a carrier underestimated its first quarter 2003 projected collected revenues but forecasted its projected collected revenues for the second through fourth quarters of 2003 accurately, it would be billed additional contribution amounts. The Commission agreed with AT&T, SBC, and Verizon that such a result was inconsistent with the public interest since it was the Commission's intention not to use a carrier's projected collected first quarter 2003 information for billing purposes.⁸

II. DISCUSSION

3. We grant New Edge's request for waiver of the Commission's universal service true-up procedures for 2003 and conclude that it demonstrated good cause to justify the waiver. Section 1.3 of the Commission's rules provides that waiver of a rule may be granted upon "good cause shown."⁹ Commission rules are presumed valid, however, and an applicant for waiver bears a heavy burden.¹⁰ The Commission may exercise its discretion to waive a rule "only if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest."¹¹ The Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy.¹²

4. As the Commission concluded in its *True-Up Order*, we find that New Edge has demonstrated that it experienced special circumstances that warrant the grant of a waiver of the Commission's universal service true-up procedures for 2003. Specifically, like AT&T, SBC, and Verizon and the eight petitioners in the Bureau's order, New Edge's actual collected revenues for first quarter 2003 exceeded its projections of collected revenues for that quarter. As a result, even if New Edge's projections for the second through fourth quarters of 2003 were completely accurate and New Edge made

⁶ See 47 C.F.R. § 54.701 (stating that the Universal Service Administrative Company is the Administrator of the universal service support mechanisms).

⁷ *True-Up Order*, 19 FCC Rcd at 13581, para. 3 (citing *Federal-State Joint Board on Universal Service, 1998 Biennial Regulatory Review – Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Service, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms, Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990, Administration of the North American Numbering Plan and North American Numbering Plan Cost Recovery Contribution Factor and Fund Size, Number Resource Optimization, Telephone Number Portability, Truth-in-Billing and Billing Format*, CC Docket Nos. 96-45, 98-171, 90-571, 92-237, 99-200, 95-116, 98-170, Order and Second Order on Reconsideration, 18 FCC Rcd 4818, 4825, para. 17 (2003)).

⁸ *Id.* at 13582, para. 7.

⁹ 47 C.F.R. § 1.3.

¹⁰ *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972) (*WAIT Radio*).

¹¹ *Northeast Cellular Telephone v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

¹² *WAIT Radio*, 418 F.2d at 1159.

appropriate contributions for these quarters, it would have contributed more through the annual true-up process than its equitable share. Therefore, we grant New Edge's waiver request and adopt the same methodology to determine an appropriate contribution as that set forth in the *True-Up Order*.¹³

III. ORDERING CLAUSE

5. Accordingly, IT IS ORDERED, pursuant to sections 1, 4(i), 5, 254 and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 155, 254, and 405, and sections 1.3, 1.429 of the Commission's rules, 47 C.F.R. §§ 1.3, 1.429, and authority delegated by sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, that the Petition for Waiver filed by New Edge Network, Inc. d/b/a New Edge Networks IS GRANTED, as set forth herein.

FEDERAL COMMUNICATIONS COMMISSION

Jeffrey J. Carlisle
Chief, Wireline Competition Bureau

¹³ See *True-Up Order*, 19 FCC Rcd at 13583, para. 8 (directing the Administrator to subtract petitioners' historical gross-billed revenues for first quarter 2003 reported on their FCC Form 499-Qs, adjusted to reflect their annual uncollectible rates for 2003 reported on their FCC Form 499-As, when conducting true-ups for the petitioners).